

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 15, 2008

STEVEN CRAIG GRIFFIN v. STATE OF TENNESSEE

**Direct Appeal from the Criminal Court for Davidson County
No. 93-C-1154 Steven R. Dozier, Judge**

No. M2008-00242-CCA-R3-PC - Filed March 5, 2009

A Davidson County jury convicted the Petitioner, Steven Craig Griffin, of one count of aggravated kidnapping and six counts of aggravated rape. The trial court ordered the Petitioner to serve an effective sentence of eighty-five years in the Tennessee Department of Correction. On direct appeal, this Court affirmed the Petitioner's convictions and sentence. The Petitioner then filed a petition for post-conviction relief, the trial court denied the petition, and this Court affirmed. The Petitioner subsequently sought post-conviction relief in the form of DNA analysis of physical evidence associated with his aggravated rape convictions. The post-conviction court denied the request, and this Court affirmed. However, our Supreme Court reversed the post-conviction court's judgment and remanded the case. On remand, the post-conviction court ordered the DNA analysis. After it reviewed the results and found them unfavorable to the Petitioner, the post-conviction court dismissed the petition. On appeal, the Petitioner contends that the DNA test results establish his claim of actual innocence of aggravated rape. After a thorough review of the record and applicable law, we affirm the judgment of the post-conviction court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JERRY L. SMITH and JOHN EVERETT WILLIAMS, JJ., joined.

David M. Hopkins, Nashville, Tennessee, for the Appellant, Steven Craig Griffin.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Lacy Wilber, Assistant Attorney General; Victor S. Johnson III, District Attorney General; Rachel Sobrero, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

I. Facts

In 1993, the Petitioner was indicted for aggravated kidnapping and multiple counts of aggravated rape. Having been extradited from Florida to Tennessee, he demanded a speedy trial under the Interstate Compact on Detainers. *See* Tennessee Code Annotated § 40-31-101, Art. III, para (a) (2006). The State obliged, and his trial commenced within 180 days. At trial, the Petitioner argued the victim consented to the sexual activity. *Griffin*, 1995 WL 387277, at *2. Nonetheless, the jury found the Petitioner guilty of one count of aggravated kidnapping and six counts of aggravated rape, and the trial court sentenced him to an effective sentence of eighty-five years. This Court affirmed his convictions and sentence on direct appeal. *See Griffin*, 1995 WL 387277.

Disposing of the Petitioner's direct appeal, this Court summarized the facts underlying the Petitioner's convictions as follows:

On October 27, 1990, Pam Castell and Mary Tellez were looking forward to a "girls' night out." Tellez was twenty-four years old and had recently moved to the Nashville area from Louisiana with her husband. Castell is a relative of Tellez's husband. After dinner at a Red Lobster, the women went to a club located in Antioch, Tennessee where they enjoyed the music and dancing. During the evening, Tellez danced with [the Petitioner]. Castell danced with another truck driver. The men joined the women at their table and, when the club was about to close, they asked the women to join them for a cup of coffee at the truck stop across the road. The four rode in Tellez's car to the truck stop. While Castell and the other man entered the truck stop diner, [the Petitioner] invited Tellez to walk around back to see his truck. Because she and her husband had considered becoming over-the-road truckers, Tellez was interested in seeing the truck and agreed to accompany [the Petitioner].

The truck was parked in a fenced area at the rear of the truck stop. A security guard patrolled the lot and collected parking fees from truckers as they exited through the gate. When Tellez and [the Petitioner] reached the truck, he grabbed her from behind and pushed her through the open door on the driver's side. In the struggle, Tellez lost her shoes. [The Petitioner] forced her into the sleeper compartment where he bound her hands with a pillowcase. He then drove away. When [the Petitioner] stopped the truck at the security gate, Tellez screamed. [The Petitioner] hit her with his fist. Shortly thereafter, [the Petitioner] stopped the truck again and retied her hands and feet. He gagged her and forced her to lie on the floorboard behind the seats.

After driving some distance, [the Petitioner] stopped the truck. He untied Tellez's feet and pulled off her pants and underwear. He digitally and orally penetrated her. Then he forced her to perform fellatio. When he ejaculated sooner

than he desired, [the Petitioner] told Tellez that she was “not doing it right” and beat her repeatedly with his fists. He then retied her feet and began driving again. While lying on the floorboard, the victim managed to shove her watch under the mattress of the sleeper and pulled a piece of paper from the logbook underneath the seat. She placed the paper in her pocket, hoping that when her body was found it would lead the police to the man who had raped her and who, she believed, would murder her. [Although Tellez’s watch was never found, the piece of paper hidden in her pocket enabled the police to find the Petitioner. Police later found a red earring belonging to Tellez under the carpet of the Petitioner’s truck.]

After driving for some period of time, [the Petitioner] stopped the truck again and penetrated Tellez vaginally and anally. Once again, when the victim did not perform oral sex to his satisfaction, he pulled her by the hair and punched her in the head and face. After rebinding her feet, he drove for some time before pulling over. He told Tellez that he would release her if she would record a statement indicating that she had consented to sex and had enjoyed herself. The victim complied, and [the Petitioner] put her out of the truck.

After walking a short distance in her bare feet, Tellez flagged down a young man who took her to a nearby convenience store where the attendant called the Cheatham County Sheriff’s Office. The victim told police that her assailant was named Steve and that he drove a red truck. Later, she selected his photograph out of a photographic lineup. [At trial, Tellez identified the Petitioner as her assailant.] Ultimately, [the Petitioner] was located in Florida where he was facing sexual battery charges.

State v. Griffin, No. 01C01-9404-CR-00144, 1995 WL 387277 (Tenn. Crim. App., at Nashville, June 28, 1995), *perm. app. denied* (Tenn. Nov. 6, 1995) (footnotes omitted).

The Petitioner filed a petition for post-conviction relief, arguing ineffective assistance of counsel, but the post-conviction court dismissed the petition, and this Court affirmed the post-conviction court’s judgment. *Griffin v. State*, No. 01C01-9801-CR-00004, 1999 WL 275168 (Tenn. Crim. App., at Nashville, May 6, 1999), *perm. app. denied* (Tenn. Oct. 4, 1999). The Petitioner then filed a petition for post-conviction relief in the form of DNA analysis of physical evidence associated with his aggravated rape convictions. *See* T.C.A. §§ 40-30-301 to -312 (2006) (“Post-Conviction DNA Analysis Act of 2001”). In his petition, the Petitioner requested that all physical evidence in the State’s possession be held for DNA analysis, and he asserted the following:

[A]ccording to [the Petitioner’s] knowledge and belief . . . the human biological evidence has never been subject to DNA Analysis for comparison and identification purposes from the alleged victim of [this] cause of action.

The petitioner did submit a blood sample for DNA Analysis

The probability does exist that the petitioner would not have been prosecuted and/or convicted if exculpatory results had been obtained through DNA Analysis.

The availability of DNA Analysis would have produced a more favorable result leading to the petitioner's innocence of the charged offense.

The post-conviction court found that the Petitioner waived his opportunity to request DNA testing when he demanded a speedy trial and also when he argued the victim consented to the sexual contact. The court then denied the Petitioner's request without ordering testing or holding an evidentiary hearing.

On appeal, this Court affirmed the post-conviction court's judgment. *Steven Griffin v. State*, No. M2003-00557-CCA-R3-PC, 2004 WL 1562390 (Tenn. Crim. App., at Nashville, Jul. 13, 2004). However, our Supreme Court, holding that "[generally] the right to DNA analysis under the Act may not be waived by implication," reversed the post-conviction court's judgment. *Griffin v. State*, 182 S.W.3d 795, 807 (Tenn. 2006). Explaining that "findings of fact upon which rights are granted or denied are best made following an evidentiary hearing," the Court instructed the post-conviction court to hold an evidentiary hearing. *Id.* at 808.

On remand, the post-conviction court, upon agreement of the parties, ordered that evidence associated with the Petitioner's convictions be subjected to DNA analysis. Specifically, the court ordered that the Tennessee Criminal Laboratory Serology section ("TCLS") analyze an article of the victim's clothing, three rape kits, and a new sample of the Petitioner's saliva to determine whether the Petitioner's DNA was present in any of the exhibits entered during his 1993 trial. Six months later, explaining that TCLS was "unable to perform the specific Y-STR DNA testing necessary to resolve the issue raised by the Petitioner," the court ordered TCLS to forward the samples to Orchid Cellmark ("Orchid") in Nashville, Tennessee, for Y-STR DNA testing. DNA testing and analysis was conducted on the evidence, and in January 2008 an evidentiary hearing was conducted in which the results of a the DNA analysis were presented to the post-conviction court.

Agent Charles Hardy, a TCLS forensic scientist, was certified as an expert in the field of DNA testing. Agent Hardy testified he received the following five items for DNA testing: blood from the victim's husband; blood from the victim; oral swabs from the victim; vaginal swabs from the victim; and blood from the Petitioner. He explained the samples from the victim and her husband were taken during the initial 1990 investigation, but the sample from the Petitioner was taken recently in order to perform the post-conviction DNA analysis.

The Petitioner introduced a report Agent Hardy prepared describing the results of his analysis. Referencing the report, Agent Hardy said he performed a “difference of extraction” analysis on the victim’s oral and vaginal swabs, which both contained semen. In the difference of extraction analysis, Agent Hardy identified two distinct fractions, the “sperm” and “non-sperm” fractions, from each sample. Next, he attempted to generate a DNA profile from each fraction using autosomal or “STR” testing.¹

In STR testing, an instrument searches the entire genome, which contains all twenty-six chromosomes, for thirteen “loci.” If all thirteen loci are found, the instrument uses the loci to create a DNA profile that may be “matched” to an identical DNA profile. If the initial STR examination finds fewer than thirteen loci, the instrument’s threshold is lowered, which allows the instrument to, in effect, “amplify” the DNA matter to a level at which the STR instrument can create a DNA profile. A DNA profile generated from an amplified sample cannot be “matched” to another sample. Instead, it can only be used to “exclude” other DNA profiles as its donor.

Agent Hardy extracted a sperm and non-sperm fraction from the victim’s oral and vaginal swabs. From the non-sperm fractions, he was able to find sufficient loci to generate a DNA profile that matched the victim’s DNA profile. However, the instrument detected insufficient loci on the sperm fractions to generate a DNA profile. Therefore, Agent Hardy could not “match” the sperm fractions of the victim’s oral and vaginal swabs to any DNA profile. Accordingly, the agent “amplified” the DNA material in the semen sample. Using this amplified sample, the instrument found six of the thirteen loci on the oral swab. Comparing these loci to the Defendant’s DNA profile, Agent Hardy concluded that the Defendant could not be excluded as the donor of the DNA material in the sperm fraction of the victim’s oral swab.

Because Agent Hardy’s STR analysis yielded only limited information about the donor of the DNA present on the victim’s oral swab, the oral swab was sent to Orchid for additional testing. At Orchid, Y-STR analysis was performed on the oral swab, and a report of Orchid’s analysis was introduced during Agent Hardy’s testimony. Y-STR analysis “filters out” the Y chromosome from other DNA material within the genome, and it searches the Y-chromosome for seventeen loci with which to create a DNA profile of the Y chromosome. The DNA profile of the Y chromosome is first compared to a diverse database of, in Orchid’s laboratory, 3561 unrelated males. The profile is then compared to the Y chromosome of the individual at issue. However, because a father passes his Y chromosome in its entirety to his male children, if the individual cannot be excluded as the donor of the Y chromosome, then neither can the individual’s patrilineal relatives.

Examining Orchid’s report, Agent Hardy explained that, in its analysis of the victim’s oral swab, Orchid found nine of the seventeen loci necessary for a full Y-STR DNA profile. Orchid,

¹“STR” analysis uses short tandem repeats.

therefore, was only able to generate a partial Y-STR DNA profile of the Y chromosome. Comparing this partial profile to the database of unrelated males, Orchid found that none of the profiles within the database matched the sample. Comparing the partial profile to the Defendant's Y chromosome, however, Orchid concluded that neither the Defendant nor any of his patrilineal relatives could be excluded as its donor.

On cross-examination, Agent Hardy testified that having both his own report as well as Orchid's report allowed him to conclude with "a little more certainty" that the oral swab contained the Petitioner's DNA. He emphasized, however, that the DNA on the oral swab did not technically "match" the Petitioner's DNA.

On re-direct examination, the agent clarified that Orchid received only the oral swab for Y-STR testing. Agent Hardy explained that the DNA material on the vaginal swab had deteriorated. He was only able to determine that the vaginal swab contained a "mixture" of DNA material of which the victim and her husband could not be excluded as donors. His STR analysis of the vaginal swab did not generate a profile matching the Petitioner. As a result, the vaginal swab was not sent to Orchid.

The Petitioner testified that in 1990, the year in which the rapes occurred, four of his brothers worked as professional truck drivers. He testified that he had never seen the victim before she testified at his trial. The Petitioner said he could explain neither how the victim's earring arrived in his truck nor how the victim obtained a page from his truck's logbook. He acknowledged that none of his brothers was named "Steve," as the victim had identified her attacker.

On cross-examination, the Petitioner testified that, although he lived in Florida in 1990, his duties as a truck driver required him to travel throughout the country, including through Nashville, Tennessee. He "did not recall" whether he was in Tennessee in October of 1990, and he conceded that none of his male relatives lived in Tennessee at that time.

At the conclusion of the hearing, the post-conviction court took the petition under advisement and later issued a written order announcing that it found the DNA analysis results were not "favorable" to the Petitioner. The order states, in relevant part:

In this case, the inconclusive results suggest the petitioner was not even entitled to DNA testing at all because the evidence had been degraded and there was not a sufficient sample to meet the thresholds required for decisive testing. Thus, the submitted evidence likely failed to meet the initial requirements required to grant the analysis that has already been conducted.

The proof revealed at trial included the following: that the victim knew her attacker as “Steve;” that the attacker drove a red semi-truck; the victim’s earring was found in the cab of the petitioner’s truck; the victim had a paper she tore from a book in the petitioner’s truck during the attack that helped the police locate him in Florida; and the victim identified him in a photographic line-up at trial. In the trial, the petitioner argued the victim consented to the sexual activity, but at this latest hearing argued he had never seen the victim before. The petitioner was unable to present any evidence which would even bolster the inconclusive DNA results. [Citation omitted.]

The Court finds that the results in this case which cannot exclude the petitioner as a donor are not “favorable” results establishing his “innocence” as contemplated by the statute. [Citation omitted.] The petitioner in this case would have been prosecuted in this case notwithstanding the results of the DNA analysis. Therefore, based upon those facts and the above cited authority, the Court finds that the results of the DNA testing in this case do not warrant post-conviction relief.

Accordingly, the court dismissed the Petitioner’s petition for post-conviction relief. This appeal followed.

II. Analysis

On appeal, the Petitioner contends that the post-conviction court erred when it dismissed his petition for post-conviction relief because, had the evidence supporting his conviction been subject to DNA analysis during his trial, the jury could have considered “the fact the evidence could not definitively state [the Petitioner] was the person that committed the alleged rape.” As a consequence, the Petitioner alleges, he “could have been found not guilty by the jury.” The Petitioner argues, specifically, that the DNA results would have “raised a doubt” in the jurors’ minds about his guilt because: (1) the evidence could not “definitively state” the Petitioner committed the rapes; (2) the victim testified the rapes occurred inside a truck, and four of the Petitioner’s male relatives were truck drivers at the time of the rapes; and (3) the vaginal swabs collected from the victim did not contain the Petitioner’s DNA. As a result, the Petitioner continues, “[t]he incomplete defense presented at [the Petitioner’s] trial should call into question the ultimate integrity of the fact-finding process.”

The State responds that, because the results of the DNA analysis were “inconclusive and did not exclude the [P]etitioner as a possible donor of the DNA samples,” the results were unfavorable to the Petitioner, and the post-conviction properly dismissed the petition pursuant to T.C.A. § 40-30-312.

The scope of our review is limited, as the post-conviction court is given considerable discretion in deciding whether the Petitioner is entitled to relief under the DNA Act. *See Jack Jay Shuttle v. State*, No. E2003-00131-CCA-R3-PC, 2004 WL 199826, at *4 (Tenn. Crim. App., at Knoxville, Feb. 3, 2004), *perm. app. denied* (Tenn. Oct. 4, 2004). Therefore, this Court will not reverse the post-conviction court unless its judgment is not supported by substantial evidence. *Willie Tom Ensley v. State*, No. M2002-01609-CCA-R3-PC, 2003 WL 1868647, at *4 (Tenn. Crim. App., at Nashville, Apr. 11, 2003), *no perm app. filed*; *see State v. Hollingsworth*, 647 S.W.2d 937, 938 (Tenn. 1983).

The Post-Conviction DNA Analysis Act of 2001 (the “DNA Act”) provides that a petitioner convicted of certain crimes, including aggravated rape, may “at any time” file a petition for DNA analysis of evidence “in the possession or control of the prosecution, law enforcement, or court, and that is related to the investigation or the prosecution that resulted in the judgment of conviction and that may contain biological evidence.” T.C.A. § 40-30-303 (2006). Under the DNA Act, the trial court, after affording the prosecution the opportunity to respond, *must* order a DNA analysis if it finds the following:

- (1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis;
- (2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;
- (3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and
- (4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

T.C.A. § 40-30-304 (2006). DNA analysis is discretionary and may be ordered if the trial court finds that the requirements of parts (2), (3), and (4) above are met and that “[a] reasonable probability exists that analysis of the evidence will produce DNA results which would have rendered the petitioner’s verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction.” T.C.A. § 40-30-305(1) (2006). The DNA Act, allowing DNA analysis at “any time,” supercedes any general statute of limitation, whether or not a request for DNA analysis was made at trial. T.C.A. § 40-30-303; *Sedley Alley v. State*, No. W2006-01179-CCA-R3-PD, 2006 WL 1703820, at *5 (Tenn. Crim. App., at Jackson, June 22, 2006), *cert. denied* (U.S. June 27, 2006).

The DNA Act provides that, once a court has ordered DNA analysis, “[i]f the results of the post-conviction DNA analysis are not favorable to the petitioner, the court shall dismiss the petition, and make further orders as may be appropriate.” T.C.A. § 40-30-312 (2006). This Court has addressed the conditions under which a post-conviction court may find the results of previously-ordered DNA tests “unfavorable” and dismiss a petition for post-conviction relief under the DNA Act. In *Hugh Peter Bondurant v. State*, this Court held that, where DNA analysis reveals that “no DNA [is] detectable” on the items tested, the results are “unfavorable” to the petitioner. 208 S.W.3d 424, 432 (Tenn. Crim. App. 2006). In *James Eric Winston v. State*, this Court found tests that revealed the petitioner’s shirt contained the victim’s blood to be “unfavorable” to the petitioner. No. M2006-01699-CCA-R3-PC, 2007 WL 2351164, *5 (Tenn. Crim. App., at Nashville, Aug. 20, 2007) (holding that DNA analysis that fails to corroborate State anecdotal trial evidence is not “favorable” to a petitioner), *no Tenn. R. App. P. 11 application filed*.

When tasked with evaluating a petitioner’s claim under sections 304(1) and 305(1) that “a reasonable probability exists” that the availability of DNA analysis would have affected his conviction, this Court has announced several principles that, in our view, are relevant to a finding of unfavorableness under section 312. *See* T.C.A. §§ 40-30-304, 305, and 312. For example, in *Sedley Alley v. State*, this Court explained, “The results of DNA testing must stand alone and do not encompass a speculative nationwide search for the possibility of a third-party perpetrator. Thus, the DNA analysis is limited to showing that the biological specimen did not belong to either the Petitioner or the victim.” 2006 WL 1703820, at *9. The DNA Act, at most, creates “a limited interest of a defendant in establishing his/her innocence and [does] not create an interest in establishing the guilt of a speculative and unknown third party.” *Id.* In *Dwight Blake v. State*, DNA analysis performed at trial revealed that an item contained the petitioner’s DNA and that “an unrelated individual having the same DNA” as the petitioner was extremely unlikely. No. M2007-00558-CCA-R3-PC, 2007 WL 4357852, *3 (Tenn. Crim. App., at Nashville, Dec. 10, 2007). In response to the petitioner’s request to re-test the evidence, in *Blake* this Court concluded that “[t]here [was] no reason to think that new DNA analysis would have produced a more favorable verdict or sentence if the results had been available at trial.” *Id.*

In the case under submission, the Petitioner received DNA testing and analysis pursuant to the DNA Act. The DNA analysis indicated that, although a diverse database of unrelated males could be excluded as the donor of the DNA material on the victim’s oral swab, neither the Petitioner nor his patrilineal relatives could be excluded.

We conclude the trial court did not err in finding that the results of the post-conviction DNA analysis were unfavorable to the Petitioner and that his petition, therefore, warranted dismissal. As discussed above, the DNA Act provides that “if the results of the post-conviction DNA analysis are *not favorable* to the petitioner, the court *shall* dismiss the petition” T.C.A. § 40-30-312 (emphasis added). The post-conviction court ordered DNA testing of the available physical evidence

that contained biological material. The court then reviewed the results and discerned no findings that were favorable to the Petitioner. Indeed, the oral swab of the victim taken immediately after the rapes bore semen of which the Petitioner could not be excluded as the donor. The court then followed the statutory directive and dismissed the complaint.

The DNA results' failure to "definitively state" that the Petitioner committed the rapes does not make the results favorable to the Petitioner. *See Winston*, 2007 WL 2351164, at *5. The DNA results' failure to exclude the Petitioner's patrilineal relatives creates only a marginal scientific uncertainty insufficient to call into question the Petitioner's guilt. *See Blake*, 2007 WL 4357852, at *3. Overwhelming evidence was presented at trial implicating the Petitioner in the kidnapping and rapes: The victim knew her attacker as "Steve," and she identified the Petitioner as her attacker both in a photographic line-up and at trial. Investigators found the victim's earring in the Petitioner's truck. Also, the investigators determined that a piece of paper the victim tore from a book in her attacker's truck came from a book found in the Petitioner's truck. Any tendency of the DNA results to implicate the Petitioner's patrilineal relatives in the multiple rapes is negligible and outweighed by evidence identifying the Petitioner as the victim's attacker.

Further, the Petitioner's attempt to implicate his father and brothers in the rape of the victim is beyond the scope of the DNA Act. The Act's reach "is limited to the performance of DNA analysis which compares the petitioner's DNA to . . . biological specimens gathered at the time of the offense." *Alley*, 2006 WL 1703820, at *9. At most, the Act creates "a limited interest of a defendant in establishing his/her innocence and [does] not create an interest in establishing the guilt of a speculative and unknown third party." *Id.* Therefore, DNA results are only "favorable" insofar as they disprove a petitioner's guilt. The DNA Act does not allow a petitioner to use DNA results to launch an open-ended inquiry into alternative suspects. We conclude that substantial evidence supports the post-conviction's court dismissal of the Petitioner's request for relief under the DNA Act. The Petitioner is not entitled to relief on this issue.

III. Conclusion

After thoroughly reviewing the record and relevant authorities, we conclude that the record supports the post-conviction court's finding that the results of the DNA analysis were not favorable to the Petitioner. Accordingly, we affirm its dismissal of the Petitioner's petition for post-conviction relief.

ROBERT W. WEDEMEYER, JUDGE